



INTERIOR BOARD OF INDIAN APPEALS

Cecilia Plain Feather v. Acting Billings Area Director, Bureau of Indian Affairs

18 IBIA 26 (10/20/1989)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

CECILIA PLAIN FEATHER

v.

ACTING BILLINGS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-36-A

Decided October 20, 1989

Appeal from a decision of the Acting Billings Area Director, Bureau of Indian Affairs, affirming the award of leases of allotted land on the Crow Reservation.

Vacated and remanded.

1. Administrative Procedure: Administrative Record--Bureau of Indian Affairs: Administrative Appeals: Generally

When the administrative record in an appeal from a Bureau of Indian Affairs Area Director's decision is inadequate to support the decision, the decision will be vacated and the case remanded for development of an adequate record and issuance of a new decision.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Cecilia Plain Feather challenges a June 13, 1988, decision of the Acting Billings Area Director, Bureau of Indian Affairs (Area Director; BIA) affirming the award of leases of Tract No. 243-1/2, Allotment No. 3371-A, and Tract No. 245, Allotment No. 760-A, on the Crow Reservation to Ramona Howe. For the reasons discussed below, the Board vacates that decision and remands this case to the Area Director for further proceedings.

Background

Some time prior to July 29, 1987, the Crow Agency, BIA, advertised for bids on farm/pasture leases for certain allotted lands on the Crow Reservation, including Tracts Nos. 243-1/2 and 245. Tract No. 243-1/2 was advertised for a lease of 4 years and 11 months, beginning on December 1, 1987, and ending on October 31, 1992. Tract No. 245 was advertised for a lease of 5 years, beginning on November 1, 1987, and ending on October 31, 1992. Bids were opened on July 29, 1987. Howe was the sole bidder on both tracts. Apparently, the leases for the tracts were prepared and sent to

Howe in early December, 1987, after which she requested credit for a lease bond. 1/

On or before December 17, 1987, 2/ appellant applied for "owner's use agreement" leases for the two tracts. 3/ On December 17, 1987, appellant

1/ The information available to the Board concerning Howe's leases comes entirely from Howe's letters to the Superintendent dated Dec. 22, 1987, and Feb. 1, 1988. Despite the Board's order to the Area Director to supplement the record with, inter alia, all documents relating to the lease award to Howe, no documents concerning Howe's leases have been supplied.

2/ The Area Director's June 13, 1988, decision states that appellant applied for an owners use agreement on Dec. 17, 1987. Again, despite the Board's specific request for a copy of the application, no copy has been furnished to the Board.

3/ An undated document in the record, titled "Public Notice" and directed to "all landowners of undivided interests in allotted Indian trust lands on the Crow Indian Reservation," states in part:

"The following is the policy regarding OWNER'S USE. As dictated by Tribal Resolution 76-25A and the Code of Federal Regulations, a written Agreement will be required by a majority of the owners.

"A. In order to qualify for owner's use:

"1. The applicant must be an heir or devisee with an interest in the heirship land, thus preventing, for example, an individual from purchasing a small interest in heirship land and then filing for owner's use on the entire tract.

"2. Unless approved by all interest owners of the tract and with the concurrence of the Secretary as codified at 25 CFR 162.12(b) a sub-lease of the owner's use rights will not be allowed.

"The applicant must sign an affidavit wherein he states under oath that he will use the land himself; no subleasing or assignment of the owner's use rights shall be permitted (except above), and any sublease or assignment shall operate to automatically cancel the owner's use and shall make the individual claiming owner's use liable for damages.

"3. The applicant must agree to deposit annually with the Bureau of Indian Affairs the fair rental value for all land over which owner's use is claimed (unless otherwise agreed to by all the parties with an interest in the land), and the Bureau of Indian Affairs shall then distribute the deposited rental payments to each of the persons with an interest in the land according to his respective share of the property.

"B. In addition to the qualifications for claiming owner's use the Bureau's policy provides that:

"1. If more than one heir and/or devisee should file an application for owner's use, and if more than one of the applicants should be willing to sign an affidavit, then the Bureau of Indian Affairs shall grant the owner's use to the applicant who agrees to pay the highest rental fees for the land, or parts thereof, unless a satisfactory compromise agreement can be reached by the competing applicants.

"2. All grants of owner's use shall be for a maximum period of (5) years; however, the fair rental value for the land over which owner's use is

was sent copies of two owner's use leases to sign. Also on that date, Howe was informed that leases would not be issued to her because of appellant's owner's use agreement application.

On December 17, 1987, Howe filed a "protest" of the lease award to appellant with the Superintendent. The Superintendent responded by letter of January 5, 1988, stating that he had awarded an owner's use lease to Sadie Plain Feather, 4/ and informing Howe of her right to appeal.

Howe appealed to the Area Director on February 1, 1988. By memorandum to the Superintendent dated April 15, 1988, the Area Director reversed the Superintendent's decision and directed him to issue leases to Howe. By letter of May 5, 1988, the Superintendent notified appellant of the Area Director's decision. Appellant filed a notice of appeal dated May 16, 1988, with the Area Director. The Area Director issued another decision on June 13, 1988, by letter to appellant. 5/ That letter states, in relevant part:

The record reveals that the Superintendent established, published, and posted his policy on owners use of allotted land. This policy outlines the procedures for allotted landowners to acquire an owners use agreement, or the land would be advertised and leased, pursuant to 25 CFR 162.

Since there were no applications for owners use on Tracts 243-1/2 and 245, 90-day notices were sent to the landowners, and the tracts advertised for lease. The sale in which the above tracts were scheduled was held on July 29, 1987.

At the sale, there was still no interest expressed by the landowners to acquire an owners use agreement. The record further shows that it was not until December 17, 1987, you applied for an owners use agreement on the above tracts. This application was received well after the lease sale, and, apparently, after the bid

fn. 3 (continued)

claimed shall be determined by the Bureau of Indian Affairs on an annual basis.

"3. Failure to pay the annual rental fees to the Bureau of Indian Affairs within fifteen (15) days of the due date shall be cause for cancellation of the owner's use." (Emphasis in original).

The notice is signed by the Superintendent.

4/ Sadie Plain Feather is not identified in the record but is presumably related to appellant.

5/ Appeal procedures evidently became confused after the Superintendent, rather than the Area Director, notified appellant of the Area Director's April 15 decision. The Area Director appears to have treated appellant's appeal as an appeal from a decision of the Superintendent.

award to Ms. Howe, as she was securing bonding for the leases, she was anticipating receiving.

Although you matched the rental bid of Ms. Howe, your application for owners use was not timely filed. Your application should have been submitted prior to the lease sale, and, certainly, not after the leases had been awarded to the sale bidders. Therefore, it is my decision that Ms. Howe is to be granted the leases on Tracts 243-1/2 and 245.

Appellant appealed this decision to the Assistant Secretary - Indian Affairs by letter of July 8, 1988. Her appeal was still pending in the Washington, D.C., office of BIA on March 13, 1989, the date new appeals regulations for BIA and the Board took effect. See 54 FR 6478 and 6483 (Feb. 10, 1989). The appeal was transferred to the Board for consideration under the new procedures on May 1, 1989. It was docketed on May 9, 1989, and a briefing schedule established. No briefs were filed. In the notice of docketing, the Board ordered the Area Director to supplement the administrative record that the Board received when the case was transferred. A supplemental record was received on July 6, 1989.

Discussion and Conclusions

[1] This is a case, like Quisno v. Billings Area Director, 17 IBIA 278 (1989), where it is not possible to tell from the administrative record what actually happened. ^{6/} Despite the Board's order for supplementation of the record in this appeal, the record remains incomplete. Documents which may well be pivotal to the decision are missing. See notes 1 and 2, supra. Further, it appears that the Area Director rendered his decision on an incomplete record. His decision indicates, for instance, that he was uncertain of whether a bid award had been made to Howe prior to appellant's submission of her owner's use application.

On the record before the Board, it is not possible to affirm the Area Director's June 13, 1989, decision. This is not to say that the decision is necessarily incorrect, but rather, that the Board is unable to determine, based on the present record, whether it is correct or incorrect. Because the decision is not supported by the record, it must be vacated, and this case remanded to the Area Director for issuance of another decision, following assembly of a complete record. At a minimum, that record should include, in addition to the documents in the present record, the date of public posting of the agency policy concerning owner's use; Crow Tribal Resolution 76-25A; the original advertisement for lease sale 87-2; appellant's application for an owner's use agreement (with all supporting documents); and all documents related to the award, or proposed award, of the lease to Howe.

^{6/} In Quisno, the Board was compelled to rely on statements which, in essence, constituted a reconstructed record. Here, even such statements are lacking.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the June 13, 1988, decision of the Acting Billings Area Director is vacated, and this case is remanded to the Area Director for further proceedings in accordance with this opinion.

//original signed

Anita Vogt
Administrative Judge

I concur:

//original signed

Kathryn A. Lynn
Chief Administrative Judge